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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/887,847	07/03/1997	? BAYCHAR	BAY-210	1504

7590 09/11/2002
FAY SHARPE BEALL FAGAN
104 EAST HUME AVENUE
ALEXANDRIA, VA 22301

EXAMINER

SINGH, ARTI R

ART UNIT	PAPER NUMBER
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1771

22

DATE MAILED: 09/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 08/887,847	Applicant(s) BAYCHAR, ?	
Examiner Ms. Arti R. Singh	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 8, 11 and 14-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1-5, 8, 11 and 14-30 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) 31-40 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 19 & 21.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The Examiner has carefully considered Applicant's amendments and accompanying remarks filed on 12/18/2001. Per response the title has been amended, claims 7, 10 & 13 have been cancelled, claims 1, 19, 20 & 21 have been amended, and new claims 27-40, not 27-39- have been added. It appears that a typographical error occurred on Applicant's part and there were 2 claim 34's. Under Rule 126 the claims were renumbered correctly and thus the new claims are 27-40 instead of 27-39. Therefore, at this time in the prosecution the pending claims in the Application are 1-5, 8, 11 and 14-40. The amendment overcomes the previously made rejections.

The USPTO acknowledges that Applicant has informed the USPTO of the ongoing litigation involved with USPN 6,048,810 (Baychar Inc. et al. v. Frisby Technologies inc. et al. Civil Docket No. CV-01-28-B). However, no papers have been received as of yet. The IDS's provided from this litigation have been reviewed.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 35-40 are indefinite for the use of tradename, Lycra in the claims. Where a trademark or tradename is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 USC 112 2nd paragraph. *See Ex Parte Simpson, 218 USPQ 1020*. The claim scope is uncertain since the trademark or tradename cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves.

4. Claims 31, 32, 35, 36, 37, 39 & 40 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 31 recites the limitation "inner moisture transfer composite" in the preamble of the claim. There is insufficient antecedent basis for this limitation in the claim. The previous language used for the preamble was "moisture transfer system", thus it is indefinite.
6. Claim 32 recites the limitation "moisture transfer composite" in the preamble of the claim. There is insufficient antecedent basis for this limitation in the claim. The previous language used in the preamble was "moisture transfer system, therefore there is a lack in antecedent basis.
7. Claim 35, 36, 37, 39, 40 recites the limitation "the liner according to claim..." in the first line of all of the aforesaid claims. There is insufficient antecedent basis for this limitation in the claim. None of these claims depend from Claim 19, which does have the limitation of a liner. Thus the claim is incomplete and therefore indefinite.
8. Claim 33 recites the limitation "inner moisture vapor transfer layer" is indefinite because the Examiner is unsure whether Applicant intends to claim the single layer of the liner or the entire liner as set forth in Claim 19.
9. Claim 34 recites the limitation "inner moisture transfer layer" is deemed indefinites as the Examiner is unsure as to whether Applicant is claiming the single layer of the moisture transfer composite or the entire moisture transfer composite as set forth in Claim 27.

Allowable Subject Matter

10. Claims 1-5, 8, 11, 14-18, 19-26, 27-30 are allowed. As indicated in the last office action 14-18 are allowed.

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11. Claims 31-40 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Arti R. Singh whose telephone number is 703-305-0291. The examiner can normally be reached on M-F 7:00am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-873-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



ars
September 9, 2002

Ms. Arti R. Singh
Patent Examiner
Art Unit 1771



CHEYL A. JUSKA
PRIMARY EXAMINER